IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2007

CORAM

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
and
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.797 of 2002

Varadharajan
rep. by his Power agent
N.Ganapathy ... Appellant

Versus

1.The Lieutenant Governor
Union Territory of Pondicherry,
Pondicherry.

2.The Government of Pondicherry,
rep. by the Joint secretary to Govt.
Revenue Department,
Pondicherry. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order in W.P.No.10033/97 dated 28.09.2001 Thos Writ Petition presented to this Court under Article ;226 of the Constitution of India to issue a Writ of certiorari to call for the records on the file of the Ist respondent in GO.M.S No. 71 dated 24.10.99 issued onder Section 4 of the Land Acquisition Act and GOMS 7 dated 11.1.1995 issued under Section 6 of the Act and to quash teh same.

For Appellant : Mr. V. Raghavachari
For Respondents: Mr.K.K.Sashidharan
Govt. Pleader(Pondicherry)

JUDGMENT

S.PALANIVELU, J.

This appeal has been directed against the Order passed in Writ petition No.10033 of 1997 by the learned Single Judge of this Court, dated 28.09.2001.

2. The material facts shorn off unnecessary details for the disposal of this appeal are as follows:

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The Government of Union Territory of Pondicherry issued Notification under Section 4(1) of the Land Acquisition Act, 1984 in G.O.Ms.No.71, Revenue Department, dated 24.10.1994, which was published in the Gazette of Pondicherry on 08.11.1994. It was declared that the lands belonging to one Nagamuthu Chettiar, son of Murugaiyan comprised in dry Survey Nos.102/1A, 102/2B and 1025A/2, totally sprawling to an extent of 0.76.34 Hectares in Pillaiyarkuppam Village of Pahur Sub Taluk, are acquired for public purpose for the construction of Kirumampakkam Police station and staff quarters at Pillaiyarkuppam Revenue Village. It is also stated therein that in accordance with the provisions of Section 4(1) of the Land Acquisition Act,1894 (Central Act, 1/1894) (herein after referred as Act), notice was given to all whomsoever it may concern. In the above said Notification, it is also mentioned that under Section 17(4) of the Act, the Administrator, Pondicherry directs that in view of the urgency of the case the provisions of Section 5(A) of the Act shall not apply to this case.

3. The original owner of the said properties had three sons by name Murugaiyan, Ganapathy and Ranganathan, among whom Ganapathy is posing in this writ proceedings as Power of agent to one Varadharajan who is none other than brother's son of Nagamuthu.

4. On 11.01.1995, by virtue of G.O.Ms.No.7, Revenue Department of the Government of Pondicherry issued another Notification under Section 6 of the Act, declaring that the possession of the lands may be taken on the expiry of 15 days after the date of publication of notice mentioned in Section 9(1) of the Act. It is also shown that the plan of the land is kept in the Office of the District Collector (Land Acquisition), Pondicherry and it may be inspected at any time during Office hours. It was published in the Gazette of Pondicherry on 24.01.1995.

5. The respondents contend that notices under Section 9(3) and 10 of the Act were served, however none appeared for enquiry and the award for this proceedings came to be passed on 29.11.1996. It is to be mentioned here that the possession of the lands were taken by the Pondicherry Government as early as on 29.03.1996 as per the procedure and the same was handed over to the Police Department on the same day. The writ petition was filed in July,1997. It is also stated that from 2003 onwards the police station in Kirumampakkam, in the buildings constructed on the acquired lands, started functioning.

6. The contention of the appellant, assailing the acquisition proceedings is three pronged.

i) Due notice was not sent to him to enable him to put forth his effective objection to the land acquisition proceedings.

ii) At the time of issuance of Notification by the Government, Nagamuthu was no more and hence it is a

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nullity.

iii) There is no urgency for the acquisition of the properties so as to invoke Section 17 of the Act.

7. At the out set, the learned counsel for the appellant would vehemently project his plea that, as the owner of the lands the appellant did not receive any notice with reference to the land acquisition at any point of time which will render the proceedings vitiated. In the affidavit, he has affirmed that the properties originally belonged to Nagamuthu and thereafter to himself (Appellant). Nagamuthu had three sons by name Murugaiyan, Ganapathy and Ranganathan. The original owner Murugaiya Chettiar had five sons, Nagamuthu, Nagalingam, Subramanian, Virappsamy and Kilachi. All the said persons passed away. The appellant Varadharajan is son of Kilachi, for and on behalf of whom the said Ganapathy filed the writ petition as his Power Agent. Even though the affidavit accompanied the writ petition is silent about the manner in which Varadharajan became owner of the properties, from the order of the learned Single Judge of this Court, it transpires that it is his contention that the property was allotted to the share of Varadharajan on the strength of unregistered deed of partition brought about among the family members. But the alleged unregistered partition deed has not seen the light of the day. Varadharajan has woefully failed to produce the documents to show his ownership in the properties. In the affidavit it is stated that Varadhrajan is in possession of the property, which is supported by the certificate issued by the Village Administrative Officer. The said certificate is available in the file which shows that in Survey No.102, the land to an extent of 47 kuzhis belongs to Varadharajan, who has been cultivating the land and the certificate was issued for the purpose of availing loan from Indian Bank alone. No probative value could be attached to a certificate issued by Village Administrative Officer to ascertain the ownership of the individual in an immovable property. While Varadharajan is unable to produce any documents, tracing his alleged title to the properties by production of necessary documents, the certificate given by the Village Administrative Officer will not stand for a minute's scrutiny. It is to be noted that by means of such certificate, title or possession of a property could not be and ought not to be decided. Further the said certificate shows only one Survey number namely 102 and other survey numbers are significantly absent. The necessary corollary would be, the writ petitioner is aa utter stranger to the property and he has no locus standi to initiate any proceedings with regard to the lands in question, and it is strange to see Ganapathy is standing as power of attorney to him.

8. It is the first contention of the appellant that no notice was served upon him to enable him to effectively participate in the land acquisition proceedings. As adverted to supra, since the appellant is not at all possessing any right or ownership over the properties acquired, no question of service of notice upon him would arise, since

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the revenue records would not show his name as owner. It is stated by the respondents that the legal heirs of Nagamuthu were served with notices properly. The learned Single Judge while discussing this point has elaborately dealt with the aspect. It is pertinent to note that the legal heirs of Nagamuthu Chettiar have not challenged the acquisition proceedings. Even Ganapathy, who, as son of Nagamuthu, has initiated the proceedings on behalf of the appellant as his power of attorney, has not moved even his little finger to question the acquisition proceedings.

9. The acquisition proceedings is also assailed by the appellant on the ground that the Notifications were issued in the name of Nagamuthu who was no more at relevant points of time and hence the Notification is a nullity.

10. The learned standing counsel for the respondents faced his argument on the strength of a decision of Division Bench of this Court in 1)G.S.GOPALAKRISHNAN,2)Tmt.RAJAMMA, 3)M.KRISHNAPPA -Vs- THE GOVERNMENT OF TAMILNADU, REP. BY ITS SECRETARY, INDUSTRIES DEPARTMENT, FORT ST. GEORDE, CHENNAI AND OTHERS (2006-3- LAW WEEKLY PAGE 939).While principles laid down by the Supreme Court have been followed, his contention that the factum of death of the owner, whose properties were acquired, should have been brought to the knowledge of the acquiring authorities at the appropriate time and if it is not established, it cannot be stated that the land acquisition proceedings becomes nullity. The operative portion of the decision is as follows.

> "Therefore in our considered opinion, the normal principle that proceedings against a dead person are a nullity, cannot be imported to proceedings under the Land Acquisition Act,1894, unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage."

In the above said ruling, important portion of the decision of the Constitution Bench of Supreme Court in Smt.Lila Vati Bai -Vs- State of Bombay(AIR 1957 Supreme Court 521) has been extracted which goes thus:-

> "The fact of the petitioner's husband was dead on the date of the order impugned has only this effect that in so far as it mentions his name as one of the persons to be served under Section 13 of the Act should be erased from the order. But even so, it does not affect the enforceability of the same."

As per the above said dictum laid down by the Supreme Court, even if the Notification under Land Acquisition Act is passed in the name of dead person, it would not render the entire acquisition proceedings null and void.

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11. The next limb of contention of the appellant is that there is no urgency for invoking Section 17 of the Land Acquisition act and there is no circumstance available to dispense with inquiry under Section 5(A)of the Act and that the respondents have not shown real urgency in this matter. The learned counsel for the appellant garnered support from a decision of Honourable Supreme Court in UNION OF INDIA AND OTHERS -Vs- MUKESH HANS ((2004) 8 SUPREME COURT CASES 14) to strengthen his contention and the proposition of law laid down therein is as follows.

> "Section 17(4) which is an exception to the normal mode of acquisition contemplated under the Act shows that existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation with Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of Section 17(4) would not have been necessary and the legislature in sections 17(1) and (2) itself could have incorporated that in such situation of existence of unforeseen emergency Section 5-A inquiry will be dispensed with automatically. But then that is not the language of the Section. Although it is possible in a given case that the urgency under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation with the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17 (1) and (2) of the Act.
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> The Limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the Limitations prescribed under Section 17(4) of the Act. Therefore if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A."

12. In the ruling of the Apex Court, it has been categorically stated that the right to question the Land Acquisition proceedings under Section 5-A of the Act is a limited one which is given to an owner

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or person interested, which is not an empty formality and is a substantive right. While coming to the facts of this case on hand, it is already observed that the appellant is in no way connected with the property. He is neither a person interested nor owner of the property. Hence the appellant cannot take recourse to the benefit of the aforementioned decision. In other words, he has no locus standi to object the Land Acquisition proceedings which is quite proper under the relevant provisions of the Act. The learned counsel for the appellant also relied upon the decisions in STATE OF PUNJAB AND ANOTHER -Vs- GURDIAL SINGH AND OTHERS ((1980) 2 SUPREME COURT CASES 471), UNION OF INDIA AND OTHERS -Vs- KRISHANLAL ARNEJA AND OTHERS (2004) 8 SUPREME COURT CASES 453) and UNION OF INDIA AND OTHERS -Vs- DEEPAK BHARDWAJ AND OTHERS ((2004) 13 SUPREME COURT CASES 85), for this proposition of law. However since the appellant is not a owner, he cannot rely upon the principles laid down therein in his favour.

13. The learned Standing Counsel for the respondents would also argue that the initiation of writ proceedings by the appellant cannot be considered for a moment, since they have been taken by him after the award was passed in this case. It is well nigh settled principles of law that after an award was passed and possession was taken by the Government, the Courts should not have exercised its power to quash the award. In MUNICIPAL COUNCIL, AHMEDNAGAR AND ANOTHER -Vs- SHAH HYDER BEIG AND OTHERS (AIR 2000 SUPREME COURT 671), the Supreme Court has held as follows:-

> " In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder. This has been the consistent view taken by this Court and in one of recent cases (C.Padma v. Dy. Secretary to the Government of Tamil Nadu., reported in (1997) 2 SCC 627.
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> Similar is the view in an earlier decision of this Court in the case of Municipal corporation of Greater Bombay v. Industrial Development Investment Co.P.Ltd,. Reported in(1996 AIR SCW 3871: AIR 1997 SC 482 ; (1196) 11 SCC 501. Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the report, this Court observed:
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> "It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court, no doubt, discretionary powers under Art.226 of the Constitution to quash the notification under S.4(1) and declaration under S.6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the

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award which is a material factor to be taken into consideration before exercising the power under Art.226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

14. Identical view has been taken by Division Benches of this Court in the decisions reported in RAMALINGAM AND OTHERS -Vs- THE STATE OF TAMILNADU, REP. BY THE SECRETARY TO THE INDUSTRIES DEPARTMENT, FORT ST. GEORGE, CHENNAI -600 009 AND OTHERS (2005 (3) CTC 1) and S.HARSHAVARDHAN AND ANOTHER -Vs- STATE OF TAMILNADU REP. BY THE SECRETARY TO GOVERNMENT, INDUSTRY DEPARTMENT, FORT ST. GEORGE, CHENNAI - 600 009 AND OTHERS (2005 (3) CTC 691).

15. In this case award was passed on 29.11.1996 and the possession of the lands were taken by the Government on 29.03.1996 and the same was handed over to the Police Department on the same day. This writ petition was filed in July,1997. Hence on this score also the appellant has to be non-suited for the relief claimed.

16. We have bestowed our careful consideration to the rival submissions. We have also followed the principles on the subject by the Apex Court and found that the appellant is not at all entitled to challenge the acquisition proceedings, since he is neither the owner nor the person interested in the acquired properties. Hence, interference with the order of the learned Single Judge of this Court is not needed. The appeal suffers dismissal.

17. In fine, this writ appeal is dismissed. The order passed by the learned Single Judge in Writ Petition No.10033 of 1997 dated 28.09.2001 is confirmed. No costs.

rrg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Lieutenant Governor
Union Territory of Pondicherry,
Pondicherry.

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2.The Government of Pondicherry,
rep. by the Joint secretary to Govt.
Revenue Department,
Pondicherry.
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